

Op. Ltr. 03-10 Charter School Boards and the UIPA

This opinion was overruled by OIP Op. Ltr. 05-09.

Ms. Janet Ishikawa
Mr. Ken Pilkenton
June 30, 2003
Page 2

June 30, 2003

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Mr. Ken Pilkenton

Re: Charter Schools and the UIPA

Dear Ms. Ishikawa and Mr. Pilkenton:

This is in response to your complaint to the Office of Information Practices (“OIP”) dated April 15, 2003, that you are unable to obtain records from Lanikai Elementary School, a new century charter school established under section 302A, Hawaii Revised Statutes.

ISSUE PRESENTED

Whether you are entitled under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”), to access records of Lanikai Elementary School that pertain to the Local School Account.

BRIEF ANSWER

No. Charter schools are “exempt from all state laws” with three exceptions. Haw. Rev. Stat. § 302A-1184 (Supp. 2002). The UIPA is a State law, and as such, charter schools are exempt from it.

Ms. Janet Ishikawa
Mr. Ken Pilkenton
June 30, 2003
Page 3

FACTS

You advised that you are parents and Lanikai School Board (“Board”) members. In an email dated December 4, 2002, Mr. Pilkenton requested access to “all records associated with [the Local School Account], detailing both deposits and expenditures, dating back to July 1, 2001.” You were given partial access on December 12, 2002, but allege most of the 2001 records were missing. In an email dated December 14, 2002, Ms. Ishikawa expanded the above request to include all records from 2001 and any written policies regarding administration of the Local School Account and required steps for reimbursements. In a letter dated April 2, 2003, you made a third record request for:

- 1) All monthly bank statements, processed bank checks, and internally generated or DOE/FMS-generated statements for the Lanikai School Local School Account and sub-accounts associated with the LSA for the calendar years 2001 and 2002.
- 2) All submitted requests for reimbursements to individuals from school funds for the calendar years 2001 and 2002.
- 3) School policies and procedures associated with the procurement of goods and services; reimbursements to individuals for school expenses; purchase order submission and processing; and the school’s annual budgeting process.

In a letter to you dated April 11, 2003, Lanikai Elementary School Principal Donna Estomago advised she was referring your record request to the Lanikai Elementary School Board, based on advice from the Board’s Deputy Attorney General.

Ms. Ishikawa clarified in a telephone conversation with the OIP on April 23, 2003, that you are not seeking access to money received by the school from the Department of Education in the Financial Management System “FMS” Account. Principal Estomago advised the OIP that the Local School Account does not contain State funds. It includes monies collected from varied sources such as field trip monies, supply monies donated, monies for various PTA purposes, the Principal’s account for visitors, etc. The monies are deposited with the Bank of Hawaii and are held for future use by individuals who have remitted it to the School. The School keeps a running record of deposits and expenditures.

DISCUSSION

The OIP administers the UIPA¹, which governs access to records of all Hawaii State and county government agencies. You seek access under the UIPA to financial records of the Lanikai Elementary School.

A threshold issue here is whether the Lanikai Elementary School, a charter school, is subject to the UIPA. Chapter 302A, Hawaii Revised Statutes, which governs charter schools, states:

§ 302A-1184 New century charter schools; exemptions.
Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
 - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
 - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; and
 - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and

¹ See Haw. Rev. Stat. § 92F-42 (Supp. 2002).

Ms. Janet Ishikawa
Mr. Ken Pilkenton
June 30, 2003
Page 5

public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century public charter schools shall not bring suit against any other entity or agency of the State of Hawaii.

Haw. Rev. Stat. § 302A-1184 (Supp. 2002) (emphasis added). Section 302A-1184, Hawaii Revised Statutes, clearly exempts charter schools from “all applicable state laws” except the three listed therein. Therefore, the OIP must conclude that charter schools, and their boards, are not subject to the UIPA. Lanikai Elementary School is not therefore required to respond to your record requests in accordance with the UIPA.²

Although charter schools are not subject to the UIPA, they may, as a policy, adopt it for the processing of record requests from the public, which would include record requests from parents. Should Lanikai Elementary choose to adopt the UIPA, it should also adopt the OIP’s administrative rules at Chapter 2-71, Hawaii Administrative Rules. If Lanikai Elementary School does adopt the UIPA, the OIP will be able to assist in interpreting the law.

Finally, despite the fact that charter schools are not subject to the UIPA, members of the Lanikai Elementary School Board may have certain access rights to School records in furtherance of Board business. The OIP, however, does not have authority to opine on this matter, and the Lanikai Elementary School Board should consult with its own attorney.

CONCLUSION

² Although charter schools are not subject to the UIPA, they are required to make certain information public. Section 302A-1184, Hawaii Revised Statutes, states “[c]harter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.” A determination of whether the Local School Account records are “funds expended for the procurement of goods and services” under section 302A-1184, Hawaii Revised Statutes, for which a public accounting is required, is beyond the scope of the OIP’s jurisdiction. The OIP suggests consultation with the Department of the Attorney General as to what must be accounted for and publicly disclosed under this section.

Ms. Janet Ishikawa
Mr. Ken Pilkenton
June 30, 2003
Page 6

Charter schools are “exempt from all state laws” including the UIPA. Haw. Rev. Stat. § 302A-1184 (Supp. 2002).

Very truly yours,

Carlotta Dias
Staff Attorney

APPROVED:

Leslie H. Kondo
Director

CMD: ankd

cc: Ms. Donna Estomago, Principal
Lanikai Elementary School

Ms. Holly Shikada, Deputy Attorney General
Department of the Attorney General